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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 23, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

ROBERT E. LEE JONES, JR.

v.

CASE NO. PUC990157

MCI WORLDCOM NETWORK SERVICES
OF VIRGINIA, INC.,
and
MCI WORLDCOM COMMUNICATIONS
OF VIRGINIA, INC.

ORDER ON RECONSIDERATION

On August 22, 2001, the State Corporation Commission ("Commission") issued its Final Order in this complaint proceeding brought by Robert E. Lee Jones, Jr., an inmate at a Virginia Department of Corrections ("DOC") facility.

On September 7, 2001, MCI WORLDCOM Network Services of Virginia, Inc., and MCI WORLDCOM Communications of Virginia, Inc. (collectively, "MCI WORLDCOM" or "the Company"), filed a timely petition for reconsideration and a motion to suspend the Final Order. On September 11, 2001, we issued an Order Granting Petition for Reconsideration and Motion to Suspend Final Order. On reconsideration, we reinstate the judgment of our Final Order and set forth a revised schedule for MCI WORLDCOM to make the filings directed in the Final Order.

MCI WORLDCOM claims in its petition that:

(1) Virginia Code § 56-234 precludes the Commission from regulating the rates charged between MCI WORLDCOM and the DOC;

(2) MCI WORLDCOM's Inmate Telephone Service ("ITS") is provided on a competitive basis;

(3) The Commission violated its own rules in determining that MCI WORLDCOM's ITS service is not competitive;

(4) It is inappropriate to single out MCI WORLDCOM's ITS service and judge whether it is being provided on a competitive basis;

(5) The Commission failed to consider certain practical consequences of its Final Order; and

(6) The Commission should reconsider its decision to determine in another docket whether refunds should be provided to ITS customers.

MCI WORLDCOM's first two arguments do not warrant further discussion on reconsideration. The Commission has articulated its findings on the jurisdictional issue both in the Final Order as well as in our Order of September 26, 2000. The Petition for Reconsideration raises no arguments on this issue that we have not previously addressed. Similarly, we have previously considered MCI WORLDCOM's arguments on the "competitive basis" issue, and we continue to disagree with the Company. The Final Order sufficiently explains our findings that MCI WORLDCOM's

intrastate interexchange telecommunications services under the ITS are not provided on a competitive basis. We will, therefore, not address these arguments further.

Further, MCI WORLDCOM contends that the Commission "clearly violated" 20 VAC 5-400-60 K of our rules governing the certification of interexchange carriers.¹ The Company raises this issue for the first time in its petition for reconsideration. The petition states that "the Commission did not provide notice to the public, nor did it provide an opportunity for any interested party to be heard regarding the question of competition among interexchange carriers for providing this service." MCI WORLDCOM asserts that the Final Order affects other carriers.

We are not convinced that the rule cited by MCI WORLDCOM is applicable to this case inasmuch as this matter was brought before the Commission by an individual as a complaint against a

¹ This rule states:

Should the Commission ever determine, after notice to the public and any affected interexchange carriers and after an opportunity is afforded for any interested party to be heard, that competition, although previously found by the Commission to exist, has ceased to exist among interexchange carriers, it may, pursuant to § 56-241 of the Code of Virginia, require that the rates of such carriers be determined pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia.

This rule was amended and recodified at 20 VAC 5-411-70, effective October 17, 2001. See Commonwealth of Virginia ex rel. State Corp. Comm'n, Ex parte: In The Matter Of Updating Certain Regulations Relating to Telecommunications, Case No. PUC010122, Final Order, Oct. 17, 2001. The amendments to this rule were not substantive.

single carrier concerning a specific set of facts and circumstances relative to the Company's Maximum Security Collect service.

MCI WORLDCOM is the only carrier that provides this telecommunications service to DOC inmates and their call recipients. Other carriers may provide similar service through arrangements with other correctional institutions. Any determination considering the competitive nature of interexchange telecommunications services from other correctional facilities and which are provided by other carriers, whether in the context of a complaint proceeding or a Commission-initiated investigation, would be based on the facts and circumstances specific to that arrangement.

Even if the rule cited by the Company is applicable to this proceeding, MCI WORLDCOM lacks standing to complain of a procedural error on the grounds that it prejudiced some other party.² To the extent the Commission did not issue formal notice of this complaint proceeding to the public or to any other carrier, and assuming such notice was required, MCI WORLDCOM has

² See Kenneth Culp Davis & Richard J. Pierce Jr., Administrative Law (3^d ed. 1994) § 7.3 at 300. (A party lacks standing to complain of a procedural error unless that error disadvantaged the party.)

not demonstrated how such lack of notice to others prejudiced the Company.³

As with its first two arguments, MCI WORLDCOM's position that it is inappropriate to single out the Company's ITS service and judge whether it is being provided on a competitive basis in compliance with § 56-481.1 was litigated fully before the Commission, and we addressed this issue in some detail in our Final Order. We do not find any new argument in the petition for reconsideration that warrants further discussion on this issue.

MCI WORLDCOM argues that the Commission's Final Order failed to recognize various "practical problems" that will result from subjecting rates charged under the ITS to regulation under Chapter 10. In our Final Order, we stated:

Because we find that the intrastate interexchange collect call service provided by MCI WORLDCOM under the DOC Inmate Telephone System is not provided on a competitive basis consistent with § 56-481.1, we must impose traditional ratemaking procedures for this interexchange service.⁴

³ As for the public's awareness of this proceeding, we note that parties who joined the case included a Special Counsel (appointed by the Governor) for the Division of Consumer Counsel, Office of Attorney General; the Virginia Chapter of Citizens United for Rehabilitation of Errants ("Virginia CURE"); and numerous individual consumers of MCI WORLDCOM's service. The DOC also participated as a party.

⁴ Final Order at 17.

We recognize that our decision may present MCI WORLDCOM, as well as the Commission and our Staff, with certain regulatory issues not previously encountered by the Company. However, we cannot abdicate our obligations to ensure compliance with the requirements of § 56-481.1 even though certain practical difficulties may arise. The Commission will endeavor to mitigate, to the extent we can, any undue additional regulatory burdens on the Company occasioned by its provisioning of its Maximum Security Collect service under the ITS on a non-competitive basis.

MCI WORLDCOM's last argument is that we should reconsider our decision to determine, in another docket, whether refunds should be provided to ITS customers for charges that did not comport with the Company's filed tariff during the period January 1, 1999, through August 31, 2000. The Company believes that any decision as to refunds should be made in this complaint proceeding. We decline to make that determination in this docket.

In the Final Order, we stated that we would docket MCI WORLDCOM's September 1, 2000, tariff filing by separate order in Case No. PUC000237 and that the Company shall file in that docket an accounting of its charges to customers during the period its charges were not in compliance with its tariff. We delayed proceeding with this tariff filing after suspending our

Final Order in response to the petition for reconsideration in this matter. Case No. PUC000237 is moving forward by Order entered today.⁵

Finally, MCI WORLDCOM's petition for reconsideration requests that if the Commission denies the petition, we stay the effectiveness of the Final Order while the Company prosecutes an appeal before the Supreme Court of Virginia. The Commission would consider such a request at the appropriate time. At this time, no appeal has been filed.

Accordingly, IT IS ORDERED THAT:

(1) The rates and charges for MCI WORLDCOM's Maximum Security Collect call intrastate interexchange telecommunications service remain interim and subject to refund as of the date of our Final Order in this proceeding, or August 22, 2001.

(2) On or before May 20, 2002, MCI WORLDCOM shall file with the Commission, in Case No. PUC000237, rates and charges for its Maximum Security Collect call intrastate interexchange

⁵ We note that MCI WORLDCOM's Maximum Security tariff filed September 1, 2000, has been accepted, effective the date of its filing. The rates and charges under this tariff were not suspended but were made interim and subject to refund only from the date of our Final Order and not retroactive to any prior period. MCI WORLDCOM's petition contends that its rates have been suspended and that the period for investigation of these rates is limited to 150 days pursuant to § 56-238. This contention fails to recognize the Commission's authority to entertain at any time complaints from consumers relative to a utility's tariffed rates and charges. See, e.g., Commonwealth of Virginia, ex rel. Linden v. Shenandoah Elec. Coop., Case No. PUE930004, 1994 SCC Ann. Rep't 347.

telecommunications service, with supporting cost data, based on the ratemaking provisions of Chapter 10 of Title 56 of the Code of Virginia.

(3) MCI WORLDCOM's September 1, 2000, tariff filing for its Maximum Security Collect call service will proceed in Case No. PUC000237 consistent with the findings in the August 22, 2001, Final Order and this Order on Reconsideration.

(4) There being nothing further to come before the Commission in this docket, the Final Order of August 22, 2001, is reinstated, this matter is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.